



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Charles A. Tosch
County Auditor
Records Building
Dallas, Texas

Dear Sir:

Opinion No. 0-3590
Re: (1) Amendment of the Dallas
County Budget.

(2) Constitutionality of
House Bill 958, Acts of the
Forty-sixth Legislature,
Regular Session.

We have received your request for an opinion from this department and have carefully considered the same. We quote from your request:

"The Assessor & Collector of Taxes for Dallas County has made application to the Commissioners' Court for an additional appropriation to his 'Deputies' Salary Account' of \$3500.00 (\$500.00 per month) for the employment of a bookkeeper and three additional deputies, whose services he represents to the Court are necessary to enable him to properly administer the 'Certificate of Title Act' as amended by H. B. No. 205, 47th Legislature, effective May, 1941, and Article 6 of the 1941 Omnibus Tax Bill, being H. B. No. 8, 47th Legislature, which levies a 1¢ tax on retail sales of motor vehicles to be collected by the County Assessor & Collector.

"Dallas County, according to the 1940 census, has a population now in excess of 350,000 inhabitants (398,049), and its officers are paid on the salary basis. In January, 1941,

in accordance with H. B. No. 958, Acts of the 46th Legislature, Regular Session, page 144 (Article 1666 of Vernon's Annotated Statutes, Vol. 3, 1940 Accumulative Pocket Part), the County Auditor, as Budget Officer, prepared, and the Commissioners' Court after public hearing, duly adopted a budget of all revenues and expenditures for the calendar year 1941. In this adopted budget, the amount budgeted for salaries in the Tax Assessor & Collector's office was based on the number of deputies it was estimated would be required to administer the tax laws as they existed in January, 1941, and the changes in the above laws (Amendment of Certificate of Title Act and Omnibus Tax Bill) were not anticipated, either in respect to the additional duties the Assessor now contends are required of him by such laws, nor was the additional income to the County allowed by such amendment and new law anticipated and budgeted. Dallas County, at this time, does not have sufficient balance of unappropriated funds which are available for allocation to the Salary Account of the Tax Assessor & Collector's office. It will, therefore, be necessary in order to comply with the request of the Assessor & Collector for additional appropriations to his Salary Account to enable him to properly administer these laws, for the 1941 budget of Dallas County to be amended to increase the budget at least \$3500.00. It is reasonable to assume that the changes in the Certificate of Title Law and the Automobile Sales Tax Law will furnish to the County at least \$3500.00 of unanticipated and unappropriated revenue.

"The Commissioners' Court has indicated its agreement with the Tax Assessor & Collector in his contention that this recently enacted legislation by the 47th Legislature, places additional administrative burdens upon his Department, which would make it necessary for him to have additional deputies to sufficiently administer these two new laws and the Court is willing

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to grant his request for the additional appropriation of \$3500.00, inasmuch as it appears that the County will obtain at least this much additional and unappropriated revenue provided the 1941 budget can be legally amended to increase the same by the requested and required amount.

"It would appear from the provisions of these two new enacted laws that it was the intention of the Legislature to allow the counties administering the laws, a portion of the taxes assessed, to-wit: 25¢ for each certificate of title issued and 2% of the 1% sales tax assessed, for administrative, and not revenue purposes, and such is the argument of the Tax Assessor & Collector.

"I shall appreciate your opinion on the following:

"Can the 1941 Dallas County Budget be amended for the purposes and under the circumstances above outlined?"

Since receiving your request and during the course of our deliberation on the propositions therein expressed, we have received a related request from Honorable H. Pat Edwards, Civil District Attorney, of Dallas County, asking for our opinion on some related questions concerning the amendment of the Dallas County Budget. We have taken the liberty, at his suggestion, to answer the questions propounded, in both requests, in this opinion.

We quote from Mr. Edwards' request:

"(1) Can the Commissioners' Court of Dallas County amend the 1941 budget duly adopted in January, 1941, in compliance with Acts of the 46th Legislature, Regular Session, House Bill No. 958, chapter 144, by passing an order at this time reducing the amount fixed by said

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budget for payment of salaries to assistants in the Tax Collector's office, the reason for such reduction being the elimination of the cost to the County of the administration of the Certificate of Title Law as amended by House Bill No. 205, Acts of the 47th Legislature, Regular Session?

"(2) Notwithstanding the fact that there is no express provision in the aforesaid budget law authorizing emergency expenditures such as is found in Article 689a of Vernon's Sales Revised Statutes (Acts of 1931, 42nd Legislature, page 339, chapter 206, par. 12), does the Commissioners' Court of Dallas County have authority to amend its adopted budget by increasing the expenditures of the county in an amount not exceeding the anticipated revenue, 'in case of grave public necessity to meet unusual and unforeseen conditions which could not, by reasonably diligent thought and attention, have been included in the original budget'?"

"(3) Inasmuch as it appears from the 1930 Federal census that in May, 1939, when the aforesaid budget act (Acts of 1939, 46th Legislature, Regular Session, page 144) was passed by the Legislature, there was only one county in the State, to-wit, Harris County, which had a population of 350,000 or more, and inasmuch as it appears from the 1940 Federal census that there are now only two counties in the State, to-wit, Harris and Dallas County, which have a population in excess of 350,000 and inasmuch as another Federal census will not be taken until 1950, is said Act unconstitutional because it applies a classification for legislative purposes based entirely on the population of the counties?"

According to the last Federal Census, Dallas County has a population of 398,049 inhabitants. From your requests it is apparent that Dallas County is operating its budgeting of county finances under H. B. 958, Acts 46th Legislature, Regular Session. It is clear that the Act mentioned was designed

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and intended to regulate the budgeting of county finances in all counties having a population in excess of 350,000 inhabitants according to the last preceding Federal Census. The budget law, referred to, makes the County Auditor the budget officer, while under the "Uniform Budget Law," the County Judge is budget officer for the county. The pertinent provisions of House Bill 958, bearing upon the amendment or change in the budget, after it has been finally approved and adopted by the Commissioners' Court, are as follows:

"Upon final approval of the budget by the Commissioners' Court, a copy of such budget as approved shall be filed with the County Auditor, the Clerk of the Court and the State Auditor, and no expenditure of the funds of the county shall be thereafter made except in strict compliance with said budget. Said court may upon proper application transfer an existing budget surplus during the year to a budget of like kind and fund, but no such transfer shall increase the total of the budget. . . .

"Upon the adoption of any general or special budget as hereinbefore provided and its certification, the County Auditor of each County thereupon shall open an appropriation account for each main budgeted or special budgeted item therein and it shall be his duty to charge all purchase orders or requisitions, contracts, and salary and labor allowances to said appropriations. . . . The amount set aside in any budget for any purchase order or requisition, contract, special purpose or salary and labor account shall not be available for allocation for any other purpose unless an unexpended balance remains in the account after full discharge of the obligation or unless the requisition, contract, or allocation has been cancelled in writing by the Commissioners' Court or County officer for a valid reason."

"The County Auditor shall make to the Commissioners' Court not less than monthly a complete report showing the financial condition of the county. . . . The report shall contain a complete

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statement of the balances on hand at the beginning and close of the month and the aggregate receipts to and aggregate disbursements from each fund, the transfers to and from each fund,"

Section 2 of the Act repeals all laws or parts of laws in conflict with the Act.

In considering the questions submitted by you, parts of the "Uniform Budget Law," being H. B. No. 768, Acts 42nd Legislature, 1931, Regular Session, page 339, and carried as Article 869-a of Vernon's Civil Statutes, should be considered. The "Uniform Budget Law" is a general budget law applicable to all public funds, with one exception. Section 12 of the Act reads in part as follows:

"Provided, however, that in all counties of this state containing a population in excess of three hundred fifty thousand (350,000), according to the last preceding United States Census, the provisions hereof shall not apply to the making of such county budgets, and in such counties all matters pertaining to the county budget shall be governed by existing law."

The "existing law" referred to above is Article 1666, Revised Civil Statutes, 1925, which was enacted in 1905 and which provides:

"He shall prepare an estimate of all the revenues and expenses and annually submit it to the Commissioners' Court, which Court shall carefully make a budget of all appropriations to be set aside for the various expenses of the county government in each branch and department. He shall open an account with each appropriation in said budget, and all warrants drawn against same shall be entered to said account. He shall carefully keep an oversight of same to see that the expenses of any department do not exceed said budget appropriations,

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and keep said Court advised of the conditions of said appropriations accounts from time to time."

The officer referred to in said Article 1666, supra, is the County Auditor of the County.

The "Uniform Budget Law" further provides in Section 12 thereof, as follows:

"When the budget has been finally approved by the Commissioners' Court, the budget, as approved, by the Court, shall be filed with the clerk of the county court, and taxes levied only in accordance therewith, and no expenditure of the funds of the County shall thereafter be made except in strict compliance with the budget as adopted by the Court. Except that emergency expenditures, in case of grave public necessity, to meet unusual and unforeseen conditions which could not, by reasonably diligent thought and attention, have been included in the original budget, may from time to time be authorized by the Court as amendments to the original budget. In all cases where such amendments to the original budget is made, a copy of the order of the Court amending the budget shall be filed with the Clerk of the Court and attached to the budget originally adopted."

Section 20-a of the "Uniform Budget Law" provides in part as follows:

"Nothing contained in this Act shall be construed as precluding the Legislature from making changes in the budget for State purposes or prevent the County Commissioners' Court from making changes in the budget for county purposes. . . ."

It can be seen from a study of House Bill 958, supra, hereinafter referred to as the "Special Budget Law," that it does not contain the "emergency" features of the "Uniform Budget Law" providing specifically for the amendment of the budget under certain circumstances.

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The "Special Budget Law" obviously provides for the creation and establishment of a "balance sheet" of anticipated revenue and probable expenses of the county. This duty has been imposed by this Act upon the County Auditor as distinguished from the "Uniform Budget Law" which imposes the same duty upon the County Judge.

The Missouri Supreme Court in *Graves v. Purcell*, 85 S. W. (2d) 543, in discussing the nature of a budget said:

"We must take judicial knowledge of the fact that the word 'budget' has a well-recognized general meaning. As applied to governments or governmental units, a 'budget' is a plan or method by means of which the expenditures and revenues are so controlled for a definite period, by some budgetary authority, as to effect a balance between income and expenditures. Of course, budget laws may differ materially in their details, but the essential and characteristic features of a budget law are as stated."

The Supreme Court of Appeals of West Virginia in the case of *Appalachian Electric Power Co. v. City of Huntington*, 177 S. E. 431, said:

"A budget is usually nothing more than a balance sheet of estimated receipts and expenditures. . . . We think the difference between a budget and funds legally at the disposal of a fiscal body is too apparent to require extended discussion or citation of authorities."

No cases have been found construing the special budget law. There are a few Texas cases construing the "Uniform Budget Law" which we desire to discuss.

The Circuit Court of Appeals, Fifth Circuit, in the case of *Southland Ice Co. v. City of Temple*, 100 Fed. (2d) 825, in passing on portions of the Uniform Budget Law applicable to cities and in holding that an attempted payment for the use of a storeroom for the protection of inventories used in connection with the operation of the city water and sewerage department by the city, could not be lawfully paid, in the absence of such an item being set up in the budget, said:

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"The city had a budget. It did not include the purchase of this property or any storehouse. It took up all current revenues because no taxes could be levied except in accordance with the budget. The city could not transfer funds and apply them to a new object not mentioned in the budget, there being no emergency.

"Likewise subdivision 20 of the Budget Law, authorizing changes in the budget, must refer to changes within the objects covered by the budget, because if new matters could be added to the budget, then the emergency provision would serve no purpose."

Our Commission of Appeals in the case of Bexar County, et al v. Hatley, et al, 150 S. W. (2d) 980, had occasion to write on the Texas Uniform Budget Law involving the action of the Commissioners' Court of Bexar County amending its budget, under the emergency feature, to transfer a budgeted item for election expenses to the rental of voting machines. Pertinent excerpts from the court's opinion are:

"It is apparent from the Act requiring the Court to adopt an annual budget for carrying on the county's business that the Legislature recognized some latitude must be allowed, within the restrictions imposed with respect to the mode of operation, to make the budget plan workable; and that a budget as originally made was adopted; because of expenditures necessitated by 'unusual and unforeseen conditions which could not by reasonably diligent thought and attention have been included in the original budget,' might 'from time to time,' be amended to meet such emergency expenditures, in case of Grave public necessity." Art. 689-g, Secs. 11 and 20, supra. "The Commissioners' Court, having authority to adopt voting machines and having done so, had 'a broad discretion to accomplish the purpose intended,' so long as it observed the constitutional and statutory limitations imposed upon it. Dodson v. Marshall, 118 S.W. (2d) 621.

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"If no item had been set up originally to meet the expense of elections and the amendment had sought to set up and provide for a new budget object, another question would be presented, *Southern Ice Co. v. City of Temple*, 100 Fed. (2d) 825. In that case it is held that under the budget law 'the city could not transfer funds and apply them to a new object not mentioned in the budget.' . . . Whether this holding is correct is not necessary to be determined in the present case, since it appears from the recitals of the orders and contract set out above that sufficient funds were available under the tax levy made on the basis of the original budget to pay the rental expense of voting machines.

". . . While the terms of the budget law are to be complied with strictly, such compliance is subject by specific provision to the exception with respect to the emergency expenditures, such as disclosed above."

The general powers of the Commissioners' Court are given in *Dodson v. Marshall* (Civ. App.) 118 S. W. (2d) 621, (writ of error dismissed), by Judge Alexander, from which we quote:

"The Commissioners' Court is the active governing body of the county. *Ehlinger v. Clark*, 117 Tex. 547, 8 S. W. (2d) 666; *Anderson v. Parsley*, Tex. Civ. App., 37 S. W. (2d) 358; *Jernigan v. Finley*, 90 Tex. 205, 38 S. W. 24. While its authority over county's business is limited to that specifically conferred by the Constitution and statutes, *Mills County v. Lampasas County*, 90 Tex. 603, 40 S. W. 403, where a right is thus conferred or obligation is imposed, said court has implied authority to exercise a broad discretion to accomplish the purposes intended. 11 Tex. Jur. 565; *City National Bank v. Presidio County*, (Tex. Civ. App.) 26 S. W. 775; *Gussett v. Nueces County*, (Tex. Com. App.) 235 S. W. 857."

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With these pertinent general provisions of the law with reference to the budget system in mind we proceed to examine the particular questions submitted by each of you concerning the budget of Dallas County.

We believe the authorities have clearly established the proposition that a new budget item may not be set up in the budget, where the operation is under the "Uniform Budget Law," by amendment thereto, except in case of an emergency as therein provided. We believe the same rule of law is applicable to the special budget law, H. B. 958, supra, under which Dallas County operates. It does not provide for any amendment of the budget for any purpose after it has been finally adopted by the Commissioners' Court. It does provide for the transfer of funds within the budget under certain conditions. Since the Legislature is presumed to know the existing laws and the effect of their operation, such as the "Uniform Budget Law" which was in force and effect at the time H. B. 958 was enacted, we believe by implication, in the absence of any provision providing for an amendment to the budget even under emergency conditions, it must have been the legislative intention that the budget in counties having 350,000 inhabitants or more should not be amended.

We do not believe, since the Uniform Budget Law expressly exempts from its terms counties having a population in excess of 350,000 inhabitants, that it can be looked to for authority to authorize the amendment of the budget in counties having more than 350,000 inhabitants.

We realize the effect of our conclusion on this matter, however, this is a matter to be called to the attention of the Legislature if any hardship is placed upon the administration of county affairs.

You are, therefore, advised that the question presented by you should be answered in the negative and that the Dallas County Budget for the year 1941 cannot be amended for the purposes submitted by you.

We believe under the "special budget law" if the Commissioners' Court finds a "valid reason" exists to terminate certain salaries, then under such budget law a reallocation can be made of such funds, within the budget, to other

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budgeted items of like kind and fund therein contained. What constitutes a "valid reason" would depend upon the facts in each case. The Commissioners' Court is obviously given discretion to determine what constitutes a "valid reason." We think it would not be unreasonable to say that a Commissioners' Court in a proper case could make a bona fide finding of fact that by the operation and effect of law certain pre-anticipated expenses in the budget are not longer necessary to administer the duties of an officer, and thereby terminate the same. Mr. Edwards' first question is answered accordingly.

The second question submitted by Mr. Edwards should be answered in the negative for the reasons already discussed.

We now proceed to answer the third question presented by Mr. Edwards concerning the constitutionality of H. B. 958, Acts 46th Legislature.

The caption of the Act reads:

"An Act providing for a budget system in counties of three hundred and fifty thousand (350,000) inhabitants or more as shown by the last preceding or any future Federal Census,
. . . ."

The emergency provision of said H. B. 958, reads:

"The fact that present laws with respect to large counties are inadequate, and an immediate necessity exists for the correction of this situation creates an emergency"

In the case of Charles W. Anderson, County Judge, et al v. Woods, Sheriff, by the Supreme Court of Texas, not yet reported, Judge Alexander said in construing a similar Act:

"It will be noticed that the first sentence of Section 4 of the Act under consideration provides:

"The provisions of this Act shall apply to all counties in this State having a popula-

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tion of more than one hundred and twenty-five thousand (125,000) according to the preceding Federal Census."

"If this were the only limitation on the application of the Act, its validity could be sustained as a general law on the ground that the classification is broad enough to include a substantial class and the necessity for a classification on the basis employed seems to bear some real and fair relation to the subject of the legislation. *Clark v. Finley, Comptroller*, 93 Tex. 178."

In the case of *Miller, et al v. County of El Paso, et al*, by the Supreme Court of Texas, not yet reported, Judge Alexander had another bracket law under consideration. In discussing the constitutionality of the Act he said:

"In other words, there must be a substantial reason for the classification. It must not be a mere arbitrary device resorted to for the purpose of giving what is, in fact, a local law the appearance of a general law." (citing several cases).

"As said in *Leonard v. Road and Maintenance District No. 1*, 187 Ark. 599, 61 S.W. (2d) 70:

"The rule is that a classification cannot be adopted arbitrarily upon a ground which has no foundation in difference of situation or circumstances of the municipalities placed in the different classes. There must be some reasonable relation between the situation of municipalities classified and the purposes and object to be attained. There must be something * * which in some reasonable degree accounts for the division into classes."

We are therefore confronted with the proposition of whether or not the classification in H. B. 958, *supra*, is based upon some real and fair relation to the subject of the

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legislation and whether or not the classification is broad enough to include a substantial class. The most striking difference between the "Uniform Budget Law" and the budget law applicable to counties having a population of 350,000 inhabitants or more is the fact that the County Auditor, an officer appointed by the District Judges, and therefore a non-elective officer, is made the budget officer to work up the budgets for such counties. Such a program could surely be said to be wholesome. Ordinarily a man qualified under the law to be a County Auditor is a man with considerable experience and training in the administration of financial affairs. We think that this might be said to constitute a sufficient reason why the Legislature saw fit to give this officer additional duties to perform as the budgetary officer of the counties affected since the large counties have a much larger amount of business to perform and possibly harder financial conditions to solve. It will be noticed also that the Legislature found that the existing laws governing budgeting were not adequate for the large counties. Although there is some difficulty in determining the real basis for such a classification out of and from the Uniform Budget Law and the necessity for such a kind of classification we think the rule announced in the case of Wood v. Marfa Independent School District (Civ. App.) 123 S. W. (2d) 429, is applicable from which we quote:

"We recognize the principle that if the question of the reasonableness of the classification were debatable, the judgment of the Legislature would be final, but we may not close our eyes to what is clear to all men."

For the reasons discussed, we are of the opinion that said House Bill 958, supra, is constitutional.

We trust that in this manner we have fully answered your inquiries.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED AUG 18, 1941

Gerardo Mann

ATTORNEY GENERAL OF TEXAS

By *Harold M. Cracker*

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